

# **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE GOOGLE DIGITAL ) CV-20-3556-BLF  
ADVERTISING ANTITRUST ) CV-20-8984-BLF  
LITIGATION ) CV-20-9092-BLF  
) CV-20-9321-BLF  
) CV-21-0022-BLF  
) CV-21-0748-NC  
)  
) SAN JOSE, CALIFORNIA  
)  
) FEBRUARY 4, 2021  
)  
) PAGES 1-39

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: DENA SHARP**  
CV-21-0022-BLF GIRARD SHARP LLP  
CV-20-3556-BLF 601 CALIFORNIA STREET, SUITE 1400  
SAN FRANCISCO, CA 94108

FOR THE DEFENDANT: **BY: JOHN EDWARD SCHMIDTLEIN**  
WILLIAMS & CONNOLLY LLP  
725 12TH STREET, N.W.  
WASHINGTON, DC 20005

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER





1 THE COURT: GOOD MORNING.

2 THE CLERK: OKAY, YOUR HONOR.

3 MOVING ON TO CASE 20-8984 SWEEPSTAKES TODAY VERSUS GOOGLE,  
4 ET AL.

5 COUNSEL, PLEASE STATE YOUR APPEARANCES.

6 MR. MITCHELL: GOOD MORNING, YOUR HONOR.

7 DAVID W. MITCHELL FROM ROBBINS GELLER RUDMAN & DOWD ON  
8 BEHALF OF PLAINTIFF SWEEPSTAKES TODAY.

9 THE COURT: GOOD MORNING.

10 MR. SCHMIDTLEIN: AND THIS IS JOHN SCHMIDTLEIN AGAIN  
11 FOR GOOGLE.

12 THE CLERK: AND MOVING ON TO 20-9092.

13 GENIUS MEDIA GROUP, ET AL. VERSUS ALPHABET, INC., ET AL.

14 COUNSEL, AGAIN, PLEASE STATE YOUR APPEARANCES.

15 MR. KOROLOGOS: GOOD MORNING, YOUR HONOR.

16 PHIL KOROLOGOS WITH BOIES SCHILLER FLEXNER FOR THE  
17 PLAINTIFFS.

18 THE COURT: GOOD MORNING.

19 MS. O'KEEFE: AND GOOD MORNING, YOUR HONOR.

20 THIS IS CAROL O'KEEFE FROM KOREIN TILLERY FOR THE  
21 PLAINTIFFS.

22 MR. SCHMIDTLEIN: AND JOHN SCHMIDTLEIN FOR THE  
23 DEFENDANTS.

24 THE CLERK: CALLING CASE 20-9321.

25 STERLING INTERNATIONAL CONSULTING GROUP VERSUS GOOGLE.

1 COUNSEL, PLEASE STATE YOUR APPEARANCES.

2 MR. CRAMER: GOOD MORNING, YOUR HONOR.

3 ERIC CRAMER FROM BERGER MONTAGUE FOR STERLING.

4 THE COURT: OKAY.

5 MR. SCHMIDTLEIN: JOHN SCHMIDTLEIN FOR DEFENDANT.

6 THE CLERK: AND CALLING 21-0022.

7 ASTARITA VERSUS GOOGLE, ET AL.

8 COUNSEL, PLEASE STATE YOUR APPEARANCES.

9 MS. SHARP: GOOD MORNING AGAIN, YOUR HONOR.

10 DENA SHARP FROM GIRARD SHARP ON BEHALF OF MR. ASTARITA.

11 MR. SCHMIDTLEIN: AND JOHN SCHMIDTLEIN AGAIN FOR  
12 DEFENDANTS.

13 THE CLERK: AND LASTLY, CALLING CASE 21-0748.

14 JLASALLE ENTERPRISES VERSUS GOOGLE.

15 COUNSEL, PLEASE STATE YOUR APPEARANCES.

16 MR. GRALEWSKI: GOOD MORNING, YOUR HONOR.

17 BOB GRALEWSKI FROM KIRBY MCINERNEY FOR THE PLAINTIFF  
18 JLASALLE ENTERPRISES, LLC.

19 THE COURT: AND MR. GRALEWSKI, THANK YOU FOR  
20 RESPONDING SO QUICKLY. WHEN I SAW YOUR REQUEST TO RELATE THE  
21 CASES, I DIDN'T WANT TO MISS THE OPPORTUNITY TO HAVE YOU HERE  
22 BECAUSE WE PROBABLY WON'T GET EVERYONE TOGETHER LIKE THIS  
23 AGAIN. SO THANK YOU FOR MAKING YOURSELF AVAILABLE.

24 MR. GRALEWSKI: AND THANK YOU FOR YOUR INVITATION AND  
25 ORDER, YOUR HONOR.

1 MR. SCHMIDTLEIN: AND JOHN SCHMIDTLEIN FOR DEFENDANT.

2 MR. STEWART: GOOD MORNING, YOUR HONOR.

3 THIS IS DENNIS STEWART. I JUST WANTED TO NOTE MY  
4 PRESENCE.

5 ALTHOUGH THE CASE IS NOT YET BEFORE YOU, I'M PLAINTIFF'S  
6 COUNSEL IN A CASE CALLED MIKULA WEB SOLUTIONS, WHICH WAS FILED  
7 AND ASSIGNED TO JUDGE RYU.

8 WE HAVE MET AND CONFERRED WITH DEFENDANTS, WHO AGREED TO  
9 OUR ADMINISTRATIVE MOTION TO RELATE THAT CASE, IT'S ANOTHER  
10 PUBLISHER CASE, AND WE WILL BE FILING THAT MOTION TODAY.

11 I JUST WANTED TO BE PRESENT IN CASE I COULD BE HELPFUL OR  
12 IF THE COURT WOULD LIKE US TO BE HERE.

13 THE COURT: THANK YOU, MR. STEWART.

14 AND ALTHOUGH I CAN CATCH SOMETHING FILED DURING THE DAY, I  
15 AM NOT CLAIRVOYANT AND KNOW THAT YOURS IS COMING, SO I'M GLAD  
16 YOU STEPPED UP.

17 AND THEN I HAVE SOMEONE ELSE WHO IS HERE.

18 MR. ISQUITH: GOOD AFTERNOON, OR GOOD MORNING,  
19 YOUR HONOR, FRED ISQUITH.

20 I'M IN A VERY SIMILAR SITUATION AS MR. STEWART. I  
21 REPRESENT THE PLAINTIFFS IN THE NEGRON V. GOOGLE MATTER,  
22 21-CV-801. WE ARE RECENTLY ON FILE, AND WE JUST LEARNED OF  
23 THIS CONFERENCE ABOUT LESS THAN 24 HOURS AGO. AND WE ARE  
24 REVIEWING, BUT WE ANTICIPATE BEING IN FRONT OF YOUR HONOR AS  
25 WELL AND WE APPRECIATE BEING INVITED TO ATTEND TODAY.

1 THE COURT: AND MR. ISQUITH, WHAT FIRM ARE YOU WITH?

2 MR. ISQUITH: I AM WITH THE ISQUITH LAW GROUP.

3 MY PRO HAC MOTION, YOUR HONOR, WILL ALSO BE COMING  
4 SHORTLY.

5 THE COURT: I ONLY ASK BECAUSE SOMEONE WITH THAT NAME  
6 WAS ASSOCIATED WITH MY FATHER-IN-LAW'S FIRM MANY YEARS AGO,  
7 MAYBE IT WAS YOUR FATHER.

8 MR. ISQUITH: FRED ISQUITH, SENIOR.

9 HE WAS WITH WOLF HALDENSTEIN A YEAR AGO AND NOW IT'S --

10 THE COURT: OKAY. ALL RIGHT.

11 ANYWAY, MY FATHER, REST IN PEACE, HAS BEEN GONE MANY  
12 YEARS, BUT IT'S AN UNUSUAL NAME, SO IT'S NICE TO HAVE YOU HERE.

13 MR. ISQUITH: THANK YOU, YOUR HONOR.

14 THE COURT: OKAY. LET ME MAKE A COUPLE COMMENTS.

15 I'M SORRY WE GOT OFF TO A LATE START WITH THE OTHER  
16 MATTERS. AFTER I SET THIS, I GOT A TRO, SO OF COURSE THAT TOOK  
17 A LITTLE TIME THIS MORNING.

18 I AM TRYING -- MY GOAL TODAY IS TO START THE CONVERSATION  
19 ABOUT HOW WE CAN MOST EFFICIENTLY PROCEED WITH THESE CASES.

20 CLEARLY, MORE WILL BE FILED, THAT'S NOT A SURPRISE. AND  
21 IT DOES APPEAR THAT THE WEIGHT OF THE CASES IS TOWARD THE  
22 PUBLISHER SIDE, ALTHOUGH I DON'T KNOW WHY THAT IS. AND MAYBE  
23 THAT'S TEMPORARY, AND IT DOES APPEAR THAT THERE IS AGREEMENT  
24 THAT THE PUBLISHERS CASE SHOULD BE CONSOLIDATED AND A  
25 CONSOLIDATED COMPLAINT FILED, AND I APPRECIATE THAT, BUT TO ME,



1 THAT'S NOT NECESSARILY WHERE I WANT TO END UP.

2 SO I ORIGINALLY WAS WORKING ON THE INITIAL CASE, WHICH WE  
3 NOW CALL IN RE GOOGLE DIGITAL ADVERTISING. AND THAT CASE  
4 ALLEGES CLASSES -- AND MS. SHARP, YOU CAN HELP ME OUT HERE,  
5 IT'S YOUR CASE, BUT IT IS BOTH ON THE PUBLISHER SIDE AND THE  
6 ADVERTISER SIDE.

7 AND THAT DOESN'T SURPRISE ME, BECAUSE FRANKLY, OVER THE  
8 YEARS, I'VE HAD CASES THAT ARE NOT ANTITRUST BUT THAT ARE  
9 CONTRACT CASES WHERE I GET ADVERTISERS AND PUBLISHERS AND THE  
10 AD WORDS PROGRAMS, AND I KNOW IT'S TWO SIDES PUSHING AGAINST  
11 THE MIDDLE, GOOGLE BEING THE MIDDLE IN THAT, MR. SCHMIDTLEIN,  
12 BUT I RELATED THESE CASES BECAUSE I HAD BOTH PUBLISHERS AND  
13 ADVERTISERS.

14 AND I CERTAINLY RECOGNIZE THERE WOULD BE DIFFERENT  
15 CLASSES, BUT I DON'T THINK THE CLAIMS ARE SIGNIFICANTLY  
16 DIFFERENT. THE MEASURE OF DAMAGES WOULD BE CLEARLY DIFFERENT,  
17 AND I DON'T LOOK AT IT AS A SINGLE POT, AND EACH SIDE IS VYING  
18 FOR ITS SHARE OF THAT POT, IF THERE'S LIABILITY.

19 BUT I'M NOT CONVINCED THAT IT IS EFFICIENT FOR THE COURT  
20 TO BREAK THIS INTO TWO CASES, BECAUSE MS. SHARP STILL HAS WHAT  
21 ARE NOW TWO SEPARATE CASES, ASTARITA, AND THE ORIGINAL CASE,  
22 THAT ARE BOTH PUBLISHER AND ADVERTISER.

23 AND SO I'M GOING TO MAKE ONE MORE COMMENT THEN I WANT TO  
24 HEAR YOUR RESPONSES. WHAT I'M INCLINED TO DO IS TO ALLOW THE  
25 PUBLISHERS TO INITIALLY DEVELOP A CONSOLIDATED PUBLISHER

1 COMPLAINT ON WHICH I CAN HEAR A SINGLE MOTION TO DISMISS, WHICH  
2 I'M SURE THERE WILL BE, AND MAYBE THERE WILL BE MULTIPLE  
3 ROUNDS, BUT ONE MOTION TO DISMISS, AND TO CLEAN UP THE  
4 PLEADINGS.

5 AND SINCE MS. SHARP IS REPRESENTING MR. ASTARITA, I  
6 PRESUME THAT THE ADVERTISER CASES ARE -- THAT HIS CASE WILL BE  
7 CONSOLIDATED INTO THE INITIAL CASE, WHICH I THINK THERE'S A  
8 MOTION TO DISMISS PENDING ON.

9 MS. SHARP: YES, YOUR HONOR.

10 THE COURT: AND MS. SHARP, THAT ONLY WOULD LEAVE OPEN  
11 HOW I HANDLE THE MOTION TO DISMISS ON THE PUBLISHER ASPECT OF  
12 THAT PENDING MOTION, IF THERE'S GOING TO BE A CONSOLIDATED  
13 COMPLAINT.

14 BUT LET ME BE REALLY CLEAR, ONCE I HAVE THE PLEADINGS  
15 CLEARED, IT WOULD BE MY INTENTION TO CONSOLIDATE ALL OF THESE  
16 CASES INTO A SINGLE ACTION.

17 AND TO THE EXTENT THAT THERE IS LEAD COUNSEL AND WE NEED  
18 TO HAVE A DIFFERENT LEAD COUNSEL FOR THE ADVERTISER SIDE OF IT,  
19 I'M GLAD TO DO ALL OF THAT. YOU ALL ARE USED TO WORKING ON  
20 PLAINTIFF COMMITTEES OF LEAD COUNSEL AND DIVIDING UP THE WORK.  
21 BUT I ALSO -- YOU KNOW, AND I WANT TO HAVE A GOOD PROTOCOL FOR  
22 DISCOVERY SO THAT YOU CAN MOVE ALONG, BUT I RELATED THESE CASES  
23 BECAUSE I SAW IT AS ONE CASE. AND I SAW IT AS ONE CASE BECAUSE  
24 MS. SHARP INITIALLY DEFINED IT AS BOTH PUBLISHER AND  
25 ADVERTISER, AND SO THAT MERGING HAS BEEN DONE NOW, FOR ALMOST

1 TWO YEARS I'VE BEEN DEALING WITH A CASE WITH BOTH.

2 THOSE ARE MY COMMENTS. LET ME START WITH MS. SHARP, YOU  
3 HAVE THE SENIORITY HERE AT THE TABLE, I THINK.

4 MS. SHARP: THANK YOU, YOUR HONOR.

5 GOOD MORNING. WE APPRECIATE THE COURT'S COMMENTS.

6 NEEDLESS TO SAY, WE AGREE WITH YOUR ASSESSMENT OF THE  
7 CASE. WE WOULDN'T HAVE PLED IT THE WAY WE DID UNLESS WE  
8 THOUGHT THAT IT MADE SENSE TO DO THAT.

9 WE ALSO AGREE WITH YOUR HONOR'S ASSESSMENT ABOUT WHAT HAS  
10 BEEN CHARACTERIZED AS A TENSION BETWEEN THE PLAINTIFFS. WE  
11 DEAL WITH CASES, COMPLEX CASES, ALL THE TIME IN WHICH THERE ARE  
12 VARIOUS GROUPS OF PLAINTIFFS THAT MAY BE POSITIONED SOMEWHAT  
13 DIFFERENTLY, RELATIVE TO ONE ANOTHER, AND YET THE EFFICIENCIES  
14 TO BE GARNERED BY PROCEEDING ON A TRULY COORDINATED OR  
15 CONSOLIDATED, IF THE COURT THINKS THAT'S THE APPROPRIATE WAY TO  
16 PROCEED, CERTAINLY REBALANCES THE BENEFIT OF THE CLASS OR  
17 CLASSES BECAUSE THEY RECEIVE MUCH MORE EFFICIENT REPRESENTATION  
18 FROM LEAD COUNSEL. SO ALL AGREEMENT THERE.

19 FROM WHAT YOUR HONOR IS SAYING, IT SOUNDS LIKE THERE IS AT  
20 LEAST AGREEMENT, AND ALSO THAT THERE OUGHT TO BE A CONSOLIDATED  
21 COMPLAINT ON THE PUBLISHER SIDE.

22 AS I SAID, WE SAW FIT TO PLEAD IT ONE WAY, WE ALSO  
23 RECOGNIZE THERE ARE A LOT OF COMPETENT, EXPERIENCED LAWYERS WHO  
24 ARE LOOKING AT A CASE. WE LIKE TO THINK WE ARE REASONABLE  
25 PEOPLE AND WE ARE PREPARED TO PROCEED ON TWO SEPARATE

COMPLAINTS, IF THAT MAKES SENSE.

ONE CASE MANAGEMENT POINT I WOULD LIKE TO MAKE SINCE I HAVE THE FLOOR NOW, YOUR HONOR, WOULD BE AS FOLLOWS.

IF THE COURT IS INCLINED TO DO TWO SEPARATE COMPLAINTS, IT MAY MAKE SENSE, FOR PURPOSES OF ORDERLY CASE MANAGEMENT, FOR US TO TAKE ANOTHER LOOK AT THE WAY THE COMPLAINT THAT WE CURRENTLY HAVE WITH A MOTION TO DISMISS PENDING, TO ASSESS WHETHER IT WOULDN'T BE BETTER IF WE ARE GOING TO BE ASSERTING CLAIMS ON BEHALF OF PUBLISHER PLAINTIFFS ANYWAY IN A SEPARATE COMPLAINT, TO TAKE STOCK.

WE UNDERSTAND WE ARE NOT THE ONLY LAWYERS WHO ARE INTERESTED IN THE CASE NOW, AND WE ARE PREPARED TO WORK COLLABORATIVELY WITH OUR COLLEAGUES HERE, IT MAY MAKE SENSE FOR US TO HIT THE PAUSE BUTTON FOR A MOMENT ON THE PLEADINGS, WHERE THEY STAND, AND FOR US TO MAKE A DETERMINATION OF WHETHER WE OUGHT TO REFINE THE WAY THAT WE HAVE PLEAD THE COMPLAINT THAT'S CURRENTLY THE OPERATIVE COMPLAINT.

LARGELY BECAUSE, AS YOUR HONOR NOTED, WE DID DEFINE BOTH ADVERTISERS AND PUBLISHERS WITHIN THAT CLASS, AND IT'S NO SECRET THAT GOOGLE'S MOTION TO DISMISS, THE LEADING ARGUMENT IS THAT THE RELEVANT MARKET IS NOT DEFINED THE WAY THAT THEY THINK IT OUGHT TO BE. AND MY COLLEAGUES ON THE PUBLISHER SIDE, I THINK WOULD ALSO SAY, LOOK, WE HAVE SOME, PERHAPS, DIFFERING OPINIONS ABOUT HOW TO DEFINE THAT MARKET.

AGAIN, REASONABLE MINDS CAN DIFFER ON THESE THINGS. WE

1 ARE PREPARED TO WORK THROUGH IT, BUT FROM A CASE MANAGEMENT  
2 PERSPECTIVE, THAT WOULD BE THE ONE SUGGESTION WE MIGHT MAKE.

3 WE SPOKE WITH GOOGLE'S COUNSEL ABOUT IT YESTERDAY, AND TO  
4 BE FAIR, WE KNOW EVERYBODY IS BUSY, SO WE HAVEN'T RECEIVED A  
5 RESPONSE FROM THEM. WE UNDERSTAND THAT.

6 BUT THAT WOULD BE THE ONE POINT THAT WE WOULD MAKE,  
7 YOUR HONOR. OTHER THAN THAT, EVERYTHING THAT THE COURT IS  
8 THINKING, MAKES A WHOLE LOT OF SENSE TO US, FROM MY  
9 PERSPECTIVE, SUBJECT TO ANY OF THE VIEWS OF MY COLLEAGUES HERE.

10 THE COURT: JUST TO FINISH UP, BEFORE I MOVE ON.

11 SO MS. SHARP, YOU WOULD BE SUGGESTING THAT MR. SCHMIDTLEIN  
12 AGREE TO ESSENTIALLY TERMINATE HIS MOTION TO DISMISS WITHOUT  
13 PREJUDICE TO RE-NOTICING IT AFTER WE GET THE CONSOLIDATED  
14 PUBLISHER'S COMPLAINT ON FILE.

15 MS. SHARP: THAT'S RIGHT, YOUR HONOR.

16 AND I WOULD ALSO PROPOSE THAT IT MAY MAKE SENSE FOR THOSE  
17 OF US THAT PLEAD WHAT'S KNOWN AS THE DIGITAL ADS COMPLAINT,  
18 TAKE ANOTHER LOOK AT THAT, IN LIGHT OF THE FACT THAT WHAT IS  
19 GOING TO HAPPEN IS THAT WE ARE GOING TO HAVE A SEPARATE  
20 COMPLAINT THAT WILL BE CHALLENGED, THAT IN ALL CANDOR AND  
21 FAIRNESS, PROBABLY INCLUDING AT LEAST SOME OF THE IDEAS AND  
22 CONCEPTS THAT ARE CURRENTLY SET OUT IN THE OPERATIVE COMPLAINT.

23 THE COURT: OKAY. THAT'S HELPFUL.

24 ALL RIGHT. THEN MR. SCHMIDTLEIN, I'M GOING TO LET YOU  
25 FINISH UP HERE, BECAUSE YOU ARE GOING TO BE COMMENTING ON ALL

1 OF THESE.

2 IN TERMS OF THE -- I DON'T KNOW WHETHER -- WELL, LET ME  
3 JUST START AT THE TOP HERE.

4 MR. MITCHELL, ON BEHALF OF SWEEPSTAKES, WOULD YOU LIKE TO  
5 MAKE ANY COMMENTS?

6 MR. MITCHELL: YOUR HONOR, THANK YOU.

7 DAVID MITCHELL. THE SWEEPSTAKES CASE, THE GENIUS CASE AND  
8 THE STERLING CASE, AS YOU SAW, FILED NEARLY IDENTICAL  
9 SUBMISSIONS.

10 AND WE HUDDLED, AND FOR THE SAKE OF EFFICIENCY, WE WOULD  
11 SUGGEST THAT MR. KOROLOGOS FROM THE BOIS SCHILLER FIRM ADDRESS  
12 THE COURT ON OUR BEHALF.

13 THE COURT: OKAY. MR. KOROLOGOS.

14 MR. KOROLOGOS: THANK YOU, YOUR HONOR.

15 FIRST, I THINK WE ARE ALL IN AGREEMENT THAT THERE OUGHT TO  
16 BE A SEPARATE PUBLISHERS COMPLAINT.

17 IN TERMS OF THE EXISTING CONSOLIDATED COMPLAINT, ON WHAT I  
18 WILL CALL THE ADVERTISER SIDE, I WOULD NOTE THAT NONE OF THE  
19 CLASS REPRESENTATIVES IN THAT ACTION ARE PUBLISHERS. AND THERE  
20 WERE NONE BRINGING THOSE KINDS OF CLAIMS UNTIL MR. ASTARITA  
21 FILED HIS CASE THIS YEAR, ON JANUARY 4TH I THINK IT WAS, WHICH  
22 IS AFTER EACH OF SWEEPSTAKES, GENIUS MEDIA AND STERLING  
23 INTERNATIONAL.

24 SO WHILE THAT CASE DOES TALK ABOUT THE SAME AD TECH  
25 MARKETPLACE, IT IS FROM THE ADVERTISER'S PERSPECTIVE

1 NECESSARILY, BASED ON WHO THOSE CLASS REPRESENTATIVES ARE.

2 OUR CLIENTS ARE PUBLISHERS, IF YOU WILL, THEY ARE THE  
3 OPPOSITE SIDE OF THE TRANSACTIONS THAT OCCUR WITH GOOGLE IN THE  
4 MIDDLE. AND OUR PERSPECTIVE, AND OUR ALLEGATIONS OF THE  
5 WRONGDOING THAT GOOGLE ENGAGED IN, ARE DIFFERENT FOR PUBLISHERS  
6 THAN THEY ARE FOR ADVERTISERS.

7 I THINK THAT THAT AT LEAST REQUIRES, AS SEEMS TO BE  
8 AGREEMENT, THAT THERE WOULD BE A SEPARATE COMPLAINT AND  
9 SEPARATE MOTIONS DIRECTED TO THAT COMPLAINT, IF THERE ARE GOING  
10 TO BE SUCH MOTIONS. WE THINK THAT THAT OUGHT TO RESULT IN  
11 SEPARATE CONSOLIDATION OF THE CASES AND SEPARATE CLASS COUNSEL,  
12 INCLUDING TO AVOID CONFLICTS.

13 WHILE I THINK YOUR HONOR IS RIGHT THAT IT'S NOT  
14 NECESSARILY THE CASE THAT THERE IS A SINGLE POOL OF CASH, THAT  
15 BOTH SIDES WILL BE FIGHTING OVER, THERE HOWEVER, ARE ECONOMIC  
16 ANALYSIS THAT THERE IS ESSENTIALLY AN OVER CHARGE OF GOOGLE TO  
17 THE MIDDLE FROM WHAT IT TAKES FROM ADVERTISERS AND WHAT IT  
18 GIVES OFF TO PUBLISHERS. AND AS A RESULT, THERE WILL BE  
19 COMPETING INTERESTS THERE WHICH WILL REQUIRE, WE BELIEVE,  
20 SEPARATE CLASSES AND SEPARATE COUNSEL IN ORDER TO PRESERVE THE  
21 EFFICACY OF THOSE TWO CLASSES.

22 SO PERHAPS THIS MAY BE CLEARER UPON THE FILING OF A  
23 CONSOLIDATED COMPLAINT ON BEHALF OF PUBLISHERS AND WHATEVER  
24 MS. SHARP DECIDES TO ADJUST WITH RESPECT TO THE ADVERTISER  
25 SIDE.

1 SO WE WOULD LIKE TO LEAVE OPEN THE POSSIBILITY OF --

2 THE COURT: SURE.

3 WHAT I'M HEARING FROM YOU IS THAT, ULTIMATELY, THERE MAY  
4 BE -- IT MAY BE APPROPRIATE FOR ME TO SEVER MS. SHARP'S  
5 PUBLISHER CLAIMS AND PUT THEM INTO YOUR PUBLISHER CASE SO  
6 THAT -- BECAUSE I'M NOT GOING TO HAVE TWO CASES ON PUBLISHERS  
7 GOING TO TRIAL SEPARATELY.

8 MR. KOROLOGOS: WE THINK THAT'S EXACTLY RIGHT. AND  
9 WE THINK THERE OUGHT TO BE A SEPARATE GROUP OF ADVERTISERS WITH  
10 ADVERTISER CLAIMS AND A SEPARATE GROUP OF PUBLISHERS WITH  
11 PUBLISHER CLAIMS.

12 THERE WILL BE SOME OVERLAP, CERTAINLY, IN DISCOVERY, SAME  
13 DEFENDANTS, SAME MARKETPLACE, SO COORDINATION, WE THINK, IS  
14 PARAMOUNT AND ABSOLUTELY NECESSARY. BUT WE THINK THAT THE  
15 THEORIES, THE COMPETING INTERESTS, ON AT LEAST DAMAGES AND THE  
16 COMPETING HARMS ON OPPOSITE ENDS OF THIS SPECTRUM OF  
17 TRANSACTIONS, WILL REQUIRE SEPARATE ACTIONS PARTICULARLY FOR  
18 TRIAL, AND THEREFORE FURTHER PROCEDURES THAT PREDATE TRIAL.

19 THE COURT: ALL RIGHT. THANK YOU. THAT'S HELPFUL.

20 AND SO -- AND MR. CRAMER, WAS THERE ANYTHING YOU WANTED TO  
21 ADD FOR STERLING?

22 MR. CRAMER: NO. WE OBVIOUSLY AGREE WITH  
23 MR. KOROLOGOS.

24 AND I WOULD JUST EMPHASIZE TO YOUR HONOR, IN TERMS OF THE  
25 DUTY OF LOYALTY REQUIRED, ESPECIALLY WITH CLASS COUNSEL, THAT



1       THERE NEEDS TO BE, IN OUR VIEW, SEPARATE CLASS COUNSEL FOR  
2       ADVERTISERS AND PUBLISHERS. I DON'T HEAR A DISAGREEMENT HERE  
3       AMONGST MY COLLEAGUES, BUT I JUST WANTED TO EMPHASIZE THAT TO  
4       YOUR HONOR.

5             I THINK GOOGLE MIGHT EXPLOIT PROBLEMS OF ADEQUACY OF  
6       COUNSEL OR ADEQUACY OF CLASS REPRESENTATIVES, IF THERE WERE  
7       DUAL LOYALTIES IN THAT RESPECT.

8             THE COURT: OKAY.

9             WELL, I MEAN, I CAN CERTAINLY ADDRESS SEPARATE CLASSES  
10       WITHIN THE SAME CASE, THE DUTY OF LOYALTY BECOMES, REALLY --  
11       IT'S ALWAYS IMPORTANT IN CLASS ACTIONS, THERE IS SOME BENDING  
12       OF THE STRICT CONCERNS ABOUT THESE CONFLICTS, AND -- BUT I HEAR  
13       YOU ON THAT.

14            LET ME JUST ASK THEN, I'VE GOT MR. GRALEWSKI, YOU ARE NOT  
15       ACTUALLY PART OF THIS YET, BUT I THINK YOU SAID IT WAS  
16       UNOPPOSED AND I WILL PROBABLY BE BRINGING YOU IN UNDER THIS  
17       TENT WITHIN A DAY.

18            ANY COMMENTS YOU WANTED TO MAKE?

19            MR. GRALEWSKI: THANK YOU, YOUR HONOR.

20            BOB GRALEWSKI. THANK YOU FOR THE OPPORTUNITY.

21            NO. WE ALSO HAD AN OPPORTUNITY TO COORDINATE WITH  
22       MR. KOROLOGOS AND OTHERS, AND HE HAS ARTICULATED OUR POSITION.

23            THANK YOU. AND MR. CRAMER.

24            THE COURT: OKAY. THANK YOU.

25            AND MR. STEWART?

1 MR. STEWART: THANK YOU, YOUR HONOR.

2 YES. OUR VIEWS COINCIDE WITH MR. KOROLOGOS AND  
3 MR. CRAMER.

4 THE COURT: GREAT. OKAY.

5 ALL RIGHT. MR. SCHMIDTLEIN, LET ME RETURN TO YOU, AND  
6 THEN I THINK I WILL PROBABLY ULTIMATELY TURN BACK TO MS. SHARP,  
7 BECAUSE SOME ISSUES HAVE BEEN RAISED WHICH SHE DID NOT ADDRESS.

8 MR. SCHMIDTLEIN: GOOD MORNING.

9 THANK YOU, YOUR HONOR.

10 I THINK FROM GOOGLE'S PERSPECTIVE, WE ARE IN AGREEMENT  
11 THAT ALL OF THE SORT OF NEWLY FILED PUBLISHER CASES SHOULD BE  
12 SUBJECT TO AN AMENDED CONSOLIDATED COMPLAINT, AND I THINK  
13 EVERYBODY IS IN AGREEMENT AS TO THAT.

14 THE QUESTION OF WHETHER MS. SHARP'S CASE SORT OF  
15 ADEQUATELY SORT OF PLEADS A PUBLISHER CLAIM, IS I THINK ONE OF  
16 THE ISSUES WE HIGHLIGHTED IN OUR MOTION TO DISMISS.

17 THE COURT: YEAH.

18 MR. SCHMIDTLEIN: THAT SHE DOESN'T HAVE A PUBLISHER  
19 PLAINTIFF.

20 AND MR. ASTARITA, I THINK MR. KOROLOGOS MAY HAVE BEEN  
21 MISTAKEN, MR. ASTARITA IS NOT AN ADVERTISER EITHER. HE IS  
22 SEEKING TO REPRESENT THE SAME TYPE OF DUAL CLASS, I BELIEVE,  
23 BUT HE'S A PUBLISHER AS WELL.

24 SO FROM OUR PERSPECTIVE, YOU KNOW, ALL OF THE PEOPLE WHO  
25 HAVE PUBLISHER CLAIMS NOW, WHETHER IT'S MR. ASTARITA OR WHETHER

1 IT'S SWEEPSTAKES TODAY AND THE OTHERS WHO HAVE FILED, THEY  
2 SHOULD ALL BE FORCED TO FILE A CONSOLIDATED AMENDED COMPLAINT  
3 SO THEY WILL BE ON A SEPARATE COMPLAINT, SEPARATE FROM THE  
4 DIGITAL ADS COMPLAINT.

5 BUT WE DO AGREE WITH YOUR HONOR THAT BECAUSE THE SUBJECT  
6 MATTER OF THE CASES DOES OVERLAP, THEY MAY BE DIFFERENT GROUPS  
7 OF PARTIES, BUT THE NATURE OF THE CLAIMS, WHEN YOU READ THE  
8 COMPLAINTS, ARE NEARLY IDENTICAL, OR THERE'S A LOT OF OVERLAP  
9 BETWEEN THEM.

10 AND SO WE THINK THE CASES SHOULD BE CONSOLIDATED INTO ONE  
11 CASE, TWO COMPLAINTS, IF THAT MAKES SENSE, AND THAT IF WE EVER  
12 GET PAST THE PLEADING STAGE AND THE CASES GO INTO DISCOVERY,  
13 THE CASES SHOULD BE SUBJECT TO THE TYPE OF TIGHT,  
14 SINGLE-SCHEDULE COORDINATION THAT CONSOLIDATION AFFORDS. SO I  
15 THINK WE ARE IN AGREEMENT THERE.

16 THE COURT: OKAY.

17 MR. SCHMIDTLEIN: BUT THE POINT THAT I DON'T AGREE  
18 WITH THAT'S BEEN RAISED THUS FAR, AND I REALLY DON'T THINK  
19 IS -- I HAVEN'T REALLY HEARD A GOOD JUSTIFICATION FOR IT, IS  
20 MS. SHARP'S SUGGESTION THAT SHE SHOULD GET TO AMEND HER  
21 COMPLAINT, THAT'S WHAT SHE'S REALLY ASKING FOR, NOT TO FILE A  
22 CONSOLIDATED COMPLAINT, SHE'S ALREADY GOT A CONSOLIDATED  
23 COMPLAINT.

24 AS YOUR HONOR WELL KNOWS, THE GRAND ATLAS AND THE DEVANEY  
25 PLAINTIFFS, THEY FILED THEIR CASE, I THINK LAST MAY AND LAST

1 JUNE. WE AGREED TO CONSOLIDATE THOSE WITH YOUR HONOR LAST  
2 SUMMER. THEY FILED AN AMENDED COMPLAINT IN SEPTEMBER, WE MOVED  
3 TO DISMISS THAT COMPLAINT LAST FALL, AND THEY RESPONDED TO THAT  
4 WITH AN AMENDMENT.

5 SO THEY HAVE NOW FILED THREE COMPLAINTS IN THIS CASE THUS  
6 FAR. AND WHAT I GUESS I'M HEARING NOW IS, CAN WE FILE ANOTHER  
7 ONE.

8 WELL, MY CLIENT HAS NOW FILED TWO MOTIONS TO DISMISS  
9 DIRECTED AGAINST THAT COMPLAINT. AND BECAUSE I THINK WE NOW  
10 SEEM TO HAVE -- WE MAY BE IN HEATED AGREEMENT THAT THE  
11 PUBLISHERS REALLY DON'T BELONG IN HER COMPLAINT, OR TO THE  
12 EXTENT SHE HAD SOME PUBLISHER CLAIM, I DON'T SEE HOW ANY OF  
13 THOSE PLAINTIFFS WHO ARE ADVERTISERS CAN BRING THAT CLAIM,  
14 THAT'S ALL GOING TO GET MOVED OVER TO THIS NEW CONSOLIDATED  
15 AMENDED COMPLAINT THAT I THINK WE ALL AGREE NEEDS TO BE FILED.

16 AND SO FROM OUR PERSPECTIVE, YOU KNOW, THEY HAVE AN  
17 OPPOSITION BRIEF DUE IN THE MIDDLE OF FEBRUARY HERE, IN ABOUT  
18 11 DAYS, WE'VE GOT A HEARING DATE IN APRIL. GOOGLE IS PREPARED  
19 TO MOVE FORWARD AND HAVE THAT MOTION TO DISMISS PRACTICE PLAY  
20 OUT ON THE ADVERTISER COMPLAINT THAT IS BEFORE YOUR HONOR. AND  
21 IN THE MEANTIME, THE PUBLISHER SIDE CAN SORT OF GET THEIR HOUSE  
22 IN ORDER, GET CLASS COUNSEL ESTABLISHED, HOWEVER THAT'S GOING  
23 TO PLAY OUT, WE DON'T TAKE A POSITION ON THAT, GET THEIR  
24 CONSOLIDATED COMPLAINT.

25 AND ONCE WE SEE THAT, AS YOUR HONOR NOTED, WE MAY WELL

1 DECIDE TO MOVE AGAINST THAT AS WELL. BUT WE DON'T SEE A REASON  
2 WHY THE DIGITAL ADS FOLKS NEED TO FILE WHAT, FROM OUR  
3 PERSPECTIVE, WOULD BE A FOURTH COMPLAINT, AND START YET ANOTHER  
4 BRIEFING CYCLE.

5 THE COURT: MR. SCHMIDTLEIN, LET ME JUST ASK YOU A  
6 QUESTION. I DON'T READ OPENING BRIEFS UNTIL A CASE IS FULLY  
7 BRIEFED, SO I HAVE NOT LOOKED AT YOUR MOTION TO DISMISS, BUT  
8 DOES IT MAKE SENSE WHEN I HAVE THE -- WHEN THE OPPOSITION IS  
9 FILED, TO SIMPLY TABLE ANY ARGUMENTS YOU MAKE ABOUT PUBLISHERS?  
10 BECAUSE THERE WILL BE A CONSOLIDATED COMPLAINT FOR PUBLISHERS,  
11 AND TO THE EXTENT MS. SHARP HAS CLIENTS SHE REPRESENTS WHO  
12 WOULD CLAIM TO BE PUBLISHERS, THAT I SEVER THAT PART OF HER  
13 CASE AND MOVE IT TO THE PUBLISHER SIDE?

14 MR. SCHMIDTLEIN: I ACTUALLY THINK, YOUR HONOR,  
15 THAT'S OBVIOUSLY A FAIR POINT. I ACTUALLY DON'T THINK THAT  
16 MS. SHARP HAS ANY PUBLISHERS WHO ARE PART OF THE DIGITAL ADS  
17 AMENDED COMPLAINT RIGHT NOW.

18 YOU KNOW, I THINK WHAT I'M HEARING, AND MAYBE MS. SHARP --  
19 I DON'T KNOW IF SHE'S PREPARED TO ADDRESS IT TODAY, BUT WHAT  
20 SHE MAY DECIDE TO DO IN THAT OPPOSITION IS TO SAY IN LIGHT OF  
21 THESE OTHER DEVELOPMENTS, WE WILL BASICALLY DROP CLAIMS, TO THE  
22 EXTENT THAT MY ADVERTISERS WERE TRYING TO BRING CLAIMS ON  
23 BEHALF OF ADVERTISERS AND PUBLISHERS, WE WILL DROP KIND OF THE  
24 PUBLISHER SIDE OF IT.

25 AND IF THAT'S THE CASE, OBVIOUSLY THAT TAKES AWAY ONE OF

1 OUR ARGUMENTS AND THAT SOLVES FOR THAT ISSUE.

2 THE COURT: ESSENTIALLY YOU WOULD BE WINNING THAT  
3 ARGUMENT, WOULDN'T YOU, MR. SCHMIDTLEIN.

4 MR. SCHMIDTLEIN: WELL, WE WOULDN'T, BUT I'VE GOT TO  
5 FIGHT THOSE FOLKS IN ANOTHER COMPLAINT, I UNDERSTAND.

6 THE COURT: YOU DO.

7 OKAY. ALL RIGHT. AND MS. SHARP, I SAID I WAS GOING TO  
8 LET YOU FINISH UP BECAUSE SOME ISSUES HAVE BEEN RAISED --

9 MR. ISQUITH: SORRY, YOUR HONOR. FRED ISQUITH.

10 THE COURT: YES.

11 MR. ISQUITH: I WANTED TO KIND OF TOUCH ON WHAT  
12 MR. SCHMIDTLEIN SAID, AS IT MAY BE SOMEWHAT RELEVANT, BECAUSE  
13 WE ALSO REPRESENT A SUBSET OF ADVERTISERS. SO OUR CASE IS NOT  
14 LUMPED IN WITH THE SET OF PUBLISHERS, WE REPRESENT INDIVIDUALS  
15 WHO PLACED ADVERTISEMENTS ON FACEBOOK.

16 AND SO TO THE EXTENT THAT AN ADVERTISER CASE IS GOING TO  
17 BE GOING FORWARD, YOU KNOW, WE WOULD LIKE TO BE INVOLVED IN  
18 THAT, AND THINK THAT -- DON'T WANT TO BE LUMPED IN HERE WITH  
19 THE PUBLISHERS, AND WE ARE HAPPY TO WORK WITH THE ADVERTISERS.

20 THE COURT: SO OF COURSE, MR. ISQUITH, AND I'M SORRY  
21 I DIDN'T GIVE YOU AN OPPORTUNITY BEFORE.

22 I DON'T KNOW THAT YOUR CASE WILL BE RELATED BECAUSE I  
23 HAVEN'T SEEN IT. YOU MENTIONED FACEBOOK, AND THAT COMES --  
24 THAT'S DIFFERENT THAN THESE OTHER CASES IN TERMS OF THEIR  
25 ALLEGATIONS, SO I'M A LITTLE CONCERNED.

1 MR. ISQUITH: SO YOUR HONOR, IT IS AGAINST GOOGLE,  
2 AND A LOT OF THE ALLEGATIONS ARE SIMILAR. THE REASON WHY WE  
3 DIDN'T PUT THEM AS RELATED IS I NEEDED TO READ EVERYONE'S  
4 COMPLAINT TO MAKE SURE I KNEW WHAT EVERYONE'S ALLEGATIONS WERE,  
5 BUT WE DO THINK THAT THERE IS GOING TO BE SOME OVERLAP, AND  
6 FAIRLY SIGNIFICANT OVERLAP THAT WOULD HELP WITH COORDINATION IN  
7 OUR PARTICULAR MATTER.

8 AND THAT'S WHY WE WILL MOST LIKELY PUT A RELATED MOTION IN  
9 FRONT OF YOUR HONOR. BUT WE WANTED TO DO OUR DUE DILIGENCE  
10 FIRST, DUE TO THE SLIGHT DIFFERENCES IN OUR CLASS AND THE  
11 DAMAGES ISSUE, BUT WE DO REPRESENT ADVERTISERS AND I WANTED TO  
12 MAKE THAT CLEAR.

13 THE COURT: ALL RIGHT. AND I APPRECIATE THAT.

14 I'M GOING TO LOOK AT EACH OF THE RELATION MOTIONS  
15 SEPARATELY, AND IT WOULD RELATE TO THE DIGITAL AD CASE, BECAUSE  
16 THAT'S THE MOTHER SHIP HERE, AND DETERMINE. BUT ONCE YOU  
17 MENTIONED FACEBOOK, I'M NOT -- YOU KNOW, I'M GOING TO BE  
18 LOOKING AT THAT CAREFULLY. I'M NOT SURE I'M GOING DOWN THAT  
19 ROAD.

20 MR. ISQUITH: UNDERSTOOD, YOUR HONOR.

21 THE COURT: AND OF COURSE YOU FILED YOUR CASE  
22 PREPARED TO LITIGATE IT SEPARATE FROM OTHER CASES, AND SO YOU  
23 MAY GET THAT OPPORTUNITY, OR FACEBOOK MAY BE AT THE HEART OF  
24 IT. YOU DIDN'T NAME FACEBOOK THOUGH; IS THAT CORRECT?

25 MR. ISQUITH: NO, YOUR HONOR.

1 THE COURT: OKAY. I HEAR YOU ON THAT.

2 WELL, I WILL JUST HAVE TO DECIDE ON THAT.

3 AND THANK YOU, MR. ISQUITH.

4 MR. ISQUITH: THANK YOU.

5 THE COURT: AND MS. SHARP?

6 MS. SHARP: THANK YOU, YOUR HONOR.

7 I WOULD HOPE THAT THE DISCUSSION THAT YOUR HONOR JUST  
8 HEARD LAYS BARE WHAT WE ARE PROPOSING, IN THE SENSE THAT THERE  
9 ARE A COUPLE OF THINGS THAT I THINK NEED TO HAPPEN HERE, AGAIN,  
10 FOR THE ORDERLY PROSECUTION OF THE CASE.

11 THE FIRST IS APPOINTMENT OF LEADERSHIP. AND AS YOUR HONOR  
12 NOTED, WE HAVE BEEN BEFORE YOUR HONOR ON THIS CASE FOR QUITE  
13 SOME TIME. WE DIDN'T SEE THE NEED FOR 23(G) COUNSEL UNTIL THE  
14 CLASS NEEDED IT, AND IT SEEMS LIKE THE CLASS IS NOW IN NEED OF  
15 A BIT OF ORGANIZATION. THAT'S POINT ONE.

16 THE COURT: YEAH.

17 MS. SHARP: AS WE SAID IN FRONT OF YOUR HONOR SEVERAL  
18 MONTHS AGO, WE KNEW THAT THE SHAPE OF THIS TABLE WOULD CHANGE.

19 THE ONE THING THAT'S CERTAIN ABOUT A LARGE ANTITRUST CASE  
20 AGAINST GOOGLE THAT INVOLVES STATE AND FEDERAL ENFORCERS IS  
21 THAT THERE ARE GOING TO BE BOTH EXTRINSIC AND INTRINSIC FACTORS  
22 THAT ARE GOING TO AFFECT THE ABILITY TO EXECUTE THE CASE IN AN  
23 ORDERLY FASHION, SO WE UNDERSTAND THAT WE DON'T CONTROL  
24 EVERYTHING.

25 TO THAT POINT, AND TO MR. SCHMIDTLEIN'S POINT ABOUT THE



1 PENDING MOTION TO DISMISS, WE CAN'T BLAME GOOGLE FOR WANTING TO  
2 TAKE THIS SHOT AND THEN GETTING ANOTHER SHOT THEREAFTER. AND  
3 WE ALSO, OF COURSE, PLED THE COMPLAINT PREPARED TO PROCEED ON  
4 IT. BUT AS YOUR HONOR HEARD, THERE ARE ADDITIONAL CASES BEING  
5 FILED.

6 A COUPLE OF POINTS I WOULD MAKE. WHEN WE FILED OUR  
7 COMPLAINT, OF COURSE THE PUBLISHER CASES WERE NOT HERE, THEY  
8 WERE NOT IN FRONT OF YOUR HONOR. AND WE -- AS I SAID, WE MADE  
9 OUR JUDGMENTS ABOUT HOW TO PLEAD THE CLASS. WE UNDERSTAND OUR  
10 COLLEAGUES HAVE SOME DIFFERENT VIEWS, AND FROM OUR PERSPECTIVE,  
11 WHILE GOOGLE, AS YOU SAY, MIGHT WIN THE PUBLISHER ARGUMENT, IN  
12 THE ADVERTISER COMPLAINT, IF IT'S LITIGATED AS IT CURRENTLY  
13 SITS, THAT REALLY PROBABLY WOULDN'T BE THE ULTIMATE DISPOSITION  
14 OR A COMPLETE DISPOSITION OF THE ISSUES THAT THE COURT IS GOING  
15 TO NEED TO REACH.

16 AND SITTING IN THE SHOES OF SOMEONE WHO DOES REPRESENT A  
17 PUBLISHER, AS MR. ASTARITA IS OUR CLIENT, JUST TO CLARIFY THAT,  
18 AND WE ARE PREPARED TO INCLUDE HIM IN A CONSOLIDATED PUBLISHER  
19 COMPLAINT IF THAT IS WHAT THE COURT CONCLUDES IS THE  
20 APPROPRIATE WAY TO PROCEED, IT WOULD SUGGEST TO US THAT IF WE  
21 ARE GOING TO COORDINATE THESE CASES ON TWO SEPARATE TRACKS, THE  
22 EXTENT OF COORDINATION OR CONSOLIDATION TO BE DETERMINED BY  
23 THIS COURT, BUT IF WE ARE GOING TO DO THAT, IT DOES SEEM TO  
24 MAKE SENSE TO DO THAT START TO FINISH, AS BEST WE CAN, AGAIN  
25 WITH THE UNDERSTANDING THAT THERE ARE STILL SHOES THAT MAY

1 DROP.

2 AS YOUR HONOR IS AWARE, GOOGLE HAS FILED A 1404 MOTION TO  
3 TRY TO BRING THE EASTERN -- THE TEXAS AG CASE, WHICH IS PENDING  
4 IN THE EASTERN DISTRICT OF TEXAS HERE. WE WILL SEE WHAT  
5 HAPPENS THERE.

6 THE COURT: LAST TIME E.D. TEX GAVE UP A CASE  
7 VOLUNTARILY WITHOUT A MANDATE FROM THE FEDERAL CIRCUIT OR  
8 ANOTHER CIRCUIT, I JUST WOULD LIKE TO KNOW IF YOU HAVE ANY  
9 EXAMPLE, MS. SHARP.

10 MS. SHARP: IT'S NOT MY MOTION, YOUR HONOR, AND  
11 THERE'S A REASON FOR THAT, YEAH.

12 THE COURT: AND YOU KNOW, I KNOW THOSE JUDGES WELL,  
13 WE ALL KNOW THEM BY REPUTATION, BUT I WILL WAIT AND SEE WHAT  
14 THEY DECIDE.

15 I WAS WAITING TO SEE WHETHER THERE WOULD BE ANY MOTION TO  
16 MOVE THESE CASES TO TEXAS IF THE GOOGLE MOTION TO BRING THEM  
17 HERE FAILS, BUT IT'S OUT OF MY HANDS. I'M GLAD TO HANDLE THIS  
18 HERE AS LONG AS IT'S HERE.

19 MS. SHARP: IF I MAY, YOUR HONOR, WE ARE PLEASED TO  
20 BE HERE.

21 IF I MAY, JUST ON LEADERSHIP, IT DOES SEEM TO ME THAT THE  
22 TWO THINGS WE DO NEED TO DO NOW IS SET A PROCESS FOR  
23 LEADERSHIP.

24 AND IT SEEMS THAT THE FOLKS ON THE PLAINTIFFS SIDE WOULD  
25 PROBABLY BENEFIT FROM A BIT MORE DISCUSSION ABOUT HOW THAT

1 OUGHT TO BE STRUCTURED.

2 I WILL SAY WITH REGARD TO MR. CRAMER'S COMMENTS ABOUT THE  
3 DUTY OF LOYALTY, AS THE COURT NOTED EARLIER IN THE PROCEEDINGS  
4 HERE TODAY, WE VIEW THE PURPORTED TENSION OR CONFLICT ISSUES A  
5 BIT DIFFERENTLY. I DON'T SEE A MANIFEST OBVIOUS PROBLEM WITH  
6 THERE BEING COUNSEL THAT REPRESENT BOTH TYPES OF CLIENTS.

7 OBVIOUSLY, THAT IS A STATEMENT THAT IS BENEFICIAL TO ME  
8 AND MY FIRM SINCE WE REPRESENT BOTH KINDS, BUT THE POINT BEING  
9 THAT I DON'T THINK THERE'S A CLEAR CUT CONFLICT OR DUTY OF  
10 LOYALTY ISSUE HERE THAT WE SHOULD DECIDE ON THE FLY, AS IT  
11 WERE. TO ME, THE ORDERLY MANAGEMENT, ONCE AGAIN, WOULD SUGGEST  
12 THAT WE TAKE A MOMENT HERE TO ASSESS HOW THESE COMPLAINTS OUGHT  
13 TO BE PLEAD, THE EXTENT TO WHICH THEY SHOULD BE CONSOLIDATED  
14 BEFORE YOUR HONOR, INCLUDING WHETHER ANY CONSOLIDATION UNDER  
15 RULE 42(A) OUGHT TO BE FOR PRETRIAL PURPOSES OR FOR TRIAL  
16 PURPOSES.

17 I HEARD ONE OF MY COLLEAGUES SAYING THERE OUGHT TO BE  
18 SEPARATE TRIALS, BUT THAT, TO ME, WOULD SUGGEST SOME PRETTY  
19 SIGNIFICANT INEFFICIENCIES, ALL OTHER THINGS EQUAL, GIVEN THE  
20 FACT THAT GOOGLE IS RIGHT IN THE MIDDLE OF THIS CASE, AND AS  
21 YOUR HONOR HAS NOTED, ITS CONDUCT AS THE MIDDLE MAN IN THIS AD  
22 TECH THAT REALLY FORMS THE FOUNDATION OF THE ANTITRUST  
23 VIOLATIONS HERE, FROM OUR PERSPECTIVE.

24 SO THERE'S A LOT TO BE DECIDED, AND FROM MY PERSPECTIVE,  
25 THE THING TO DO IS TO SET A PROCESS. WE ARE HAPPY TO FILE A

1 MOTION WITH YOUR HONOR CONCERNING THE PENDING MOTION TO DISMISS  
2 RIGHT NOW, BUT AS I SAY, WE HAVE BEEN PREPARED TO GO FORWARD ON  
3 THAT, BUT GIVEN THE EVENTS HERE AND GIVEN THE LIKELIHOOD THAT  
4 ADDITIONAL CASES WILL BE FILED, IT MAY BE A BIT MORE JUDICIOUS  
5 TO JUST HIT THE PAUSE BUTTON FOR A MOMENT, LET OURSELVES GET  
6 ORGANIZED, AND THEN DECIDE HOW TO PROCEED.

7 THE COURT: ALL RIGHT.

8 SO OF COURSE I WANT TO WORK TOWARD GETTING THE PLEADINGS  
9 SETTLED SO THAT YOU REALLY KNOW WHAT YOU'RE LITIGATING.

10 AND IT SEEMS, MS. SHARP, THAT YOU REPRESENT ALL THE  
11 ADVERTISERS THAT HAVE COME FORWARD SO FAR. AND IT ALSO SEEMS  
12 TO ME THAT EITHER ALL THE PUBLISHERS WILL BE CONSOLIDATED INTO  
13 ONE CASE, OR YOUR ATTEMPT TO REPRESENT PUBLISHERS, YOUR  
14 REPRESENTATION OF MR. ASTARITA, WHO IS A PUBLISHER, IS GOING TO  
15 BE SEVERED AND GO INTO THE PUBLISHER CASE.

16 SO IT SEEMS LIKE THE REALM OF POSSIBILITY IS PRETTY SMALL  
17 HERE, MY CHOICES ARE SMALL. I DON'T THINK I CAN -- I WOULD  
18 ACTUALLY LIKE TO PROCEED ON TWO SEPARATE COMPLAINTS UNTIL WE  
19 SATISFY THE PLEADING. AND THEN WHEN I CAN LOOK AT THE  
20 PLEADING, I CAN DECIDE IF FURTHER CONSOLIDATION IS NEEDED.

21 AND I RECOGNIZE RIGHT NOW I'VE GOT A PENDING MOTION TO  
22 DISMISS, WHERE I GATHER FROM MR. SCHMIDTLEIN, HE IS SEEKING TO  
23 DISMISS YOUR PUBLISHER CLAIMS BECAUSE THERE IS NO PLAINTIFF  
24 WITH STANDING TO REPRESENT, OR WHETHER -- MAYBE IT'S A  
25 TYPICALITY ARGUMENT, I DON'T KNOW WHICH YOU'VE MADE ON THAT.

1           AND, I MEAN, IT DOESN'T MAKE SENSE FOR ME TO HAVE TO  
2           DECIDE THAT IF I'VE GOT PUBLISHERS. I MEAN, I'VE GOT AN  
3           ABUNDANCE OF PUBLISHERS GOING FORWARD, SO IT JUST DOESN'T SEEM  
4           TO MAKE SENSE TO HAVE TO LITIGATE THAT FOR NOTHING. BUT IT  
5           DOES MAKE SENSE FOR ME TO LOOK AT THE ADVERTISER CLAIMS BECAUSE  
6           YOU'VE GOT THEM ALL.

7           AND YOU THE REPRESENT MR. ASTARITA, IS HE AN ADVERTISER OR  
8           ONLY -- HE IS BOTH, ISN'T HE?

9           MS. SHARP: HE'S A PUBLISHER, YOUR HONOR.

10          THE COURT: HE'S A PUBLISHER.

11          MS. SHARP: THAT'S RIGHT.

12          THE COURT: SO THE ADVERTISING PART OF THIS CASE, WE  
13          SHOULD FINISH THAT UP.

14          AND I WOULD URGE YOU TO CONSIDER EITHER MR. SCHMIDTLEIN'S  
15          RECOMMENDATION THAT YOU SIMPLY DISMISS YOUR PUBLISHER CLAIM, OR  
16          I SUPPOSE YOU COULD -- I MEAN, IT DOESN'T MAKE ANY SENSE TO  
17          SEVER. WHEREVER YOUR CLIENT IS, IS GOING TO BE THE MEMBER OF A  
18          CLASS. I DON'T KNOW THAT THEY WOULD BE A MEMBER OF A CLASS OF  
19          PUBLISHERS.

20          SO I WOULD GO FORWARD WITH MR. SCHMIDTLEIN'S MOTION TO  
21          DISMISS. I PREFER TO ONLY GO FORWARD AS TO THE ADVERTISERS AND  
22          LET ME LOOK AT THAT.

23          AND I DO -- WE DO NEED -- WE DO NEED TO HAVE A LEADERSHIP  
24          COMMITTEE DEVELOPED. AND TYPICALLY I WOULD ASK ALL OF THE  
25          PLAINTIFFS'S COUNSEL TO MEET AND MAKE A RECOMMENDATION. AND I

1 NEED A LEAD COUNSEL, I NEED A COMMITTEE, I NEED -- YOU KNOW, I  
2 AM SURE YOU WILL ALL BE SENSITIVE TO THE NEED OF HAVING A  
3 DIVERSE GROUP OF ATTORNEYS ON THE LEADERSHIP COMMITTEE THAT  
4 WILL PROVIDE THE OPPORTUNITY FOR NEWER ATTORNEYS TO PARTICIPATE  
5 FOR FIRMS THAT ARE VERY EXPERIENCED, TO BE IN LEADERSHIP, AND  
6 FOR FIRMS THAT ARE UP AND COMING AS WELL. BUT THAT'S WHAT  
7 EVERY JUDGE TELLS YOU, I DON'T NEED TO GO THROUGH THAT.

8 WHAT I REALLY NEED IS A TIMELINE AS TO WHEN YOU WOULD  
9 EITHER SUBMIT TO ME A PROPOSAL, OR A MOTION FOR APPOINTMENT OF  
10 LEAD COUNSEL.

11 AND SO LET ME GO BACK. I WAS HEARING FROM MR. KOROLOGOS,  
12 AS THE SPOKESPERSON, WHAT IS YOUR THINKING ON THAT?

13 MR. KOROLOGOS: YOUR HONOR, WE HAD SUGGESTED THAT  
14 SUCH APPLICATIONS BE PUT IN IN TWO WEEKS, ON FEBRUARY 18TH,  
15 SUBJECT TO PEOPLE'S AVAILABILITY TO HAVE THE NECESSARY  
16 DISCUSSIONS FOR HOPEFULLY REACHING AN AGREEMENT SO THAT A  
17 STIPULATION COULD BE PUT IN.

18 WE WOULD PROPOSE THAT DATE, OR PERHAPS A WEEK LATER, JUST  
19 TO GIVE PEOPLE SOME TIME.

20 THE COURT: I THINK THAT MAKES SENSE, AND THAT  
21 WOULD -- LET ME LOOK AT MY CALENDAR. THAT WOULD BRING US RIGHT  
22 TOWARD THE END OF FEBRUARY, SO I THINK THREE WEEKS MAKES SENSE.  
23 FEBRUARY 25TH.

24 MR. KOROLOGOS: THANK YOU, YOUR HONOR.

25 MR. CRAMER: YOUR HONOR, THIS IS ERIC CRAMER.

1 MAY I ASK A POINT OF CLARIFICATION?

2 SO ONE QUESTION IS WHETHER YOUR HONOR IS ASKING FOR A  
3 LEADERSHIP COMMITTEE FOR ADVERTISERS AND PUBLISHERS TOGETHER,  
4 OR SIMPLY A LEADERSHIP COMMITTEE FOR PUBLISHERS SO THAT THE  
5 PUBLISHER COUNSEL CAN GET TOGETHER AND HAVE PEOPLE IN CHARGE OF  
6 FILING AND DECIDING ON AN AMENDED COMPLAINT?

7 THE COURT: THANK YOU FOR THAT CLARIFICATION, I THINK  
8 THAT'S IMPORTANT.

9 FOR NOW, I'M GOING TO LIMIT IT TO PUBLISHERS. AND YOU  
10 ALL -- BECAUSE MS. SHARP REPRESENTS THE ONLY ADVERTISER, SHE  
11 DOESN'T NEED A COMMITTEE FOR ADVERTISERS.

12 I WANT TO MOVE FORWARD, INITIALLY, ON TWO SEPARATE  
13 COMPLAINTS. I THINK IT WILL HELP ME TO FOCUS ON THE ISSUES  
14 THAT ARISE. IT MAY BE SHORT LIVED, I WANT TO BE CLEAR ON THAT,  
15 AND I EXPECT CONSOLIDATION OF DISCOVERY, SO I'M NOT --

16 MR. ISQUITH: YOUR HONOR, SORRY FOR INTERRUPTING.

17 FRED ISQUITH AGAIN, YOUR HONOR.

18 I KNOW WE ARE NOT RELATED YET, BUT AS A POINT OF  
19 CLARIFICATION, WE DO HAVE ADVERTISERS AS WELL. SO I KNOW WE  
20 ARE NOT RELATED AND WE ARE GOING TO GET THAT MOTION IN, BUT TO  
21 THE POINT THAT, YOU KNOW, SOME COORDINATION, I'M HAPPY TO WORK  
22 WITH MS. SHARP ON THE ADVERTISERS, I'VE WORKED WITH HER BEFORE,  
23 BUT I JUST WANTED TO -- IF YOU WOULD LIKE -- WE WOULD LIKE TO  
24 BE PART OF THAT CONVERSATION AS WELL.

25 THE COURT: SO I'M IN A DIFFICULT POSITION BECAUSE I

1 HAVE CONCERNS ABOUT WHETHER I'M GOING TO RELATE YOUR CASE.

2 AND I WANT TO GIVE EVERYONE THE OPPORTUNITY TO -- WELL, IT  
3 WOULD REALLY BE MS. SHARP, BECAUSE YOU WILL BE SEEKING TO  
4 RELATE TO HER CASE, BECAUSE THAT'S THE LOW NUMBER CASE AND NOT  
5 THE OTHERS. I'M NOT SEVERING THE PUBLISHER CLAIMS THAT  
6 MS. SHARP HAS AT THIS POINT.

7 AND SO -- AND I'M IN A QUANDARY AS TO WHAT TO DO,  
8 MR. ISQUITH, TO BE FAIR TO YOUR CLIENTS, IN JOINING AT THE  
9 PROPER TIME. AND, YOU KNOW, I THINK YOU UNDERSTAND THAT WHERE  
10 I'M HEADED IS SEPARATE COMPLAINTS, AND MAYBE YOU END UP  
11 SEVERING -- I END UP SEVERING YOUR CLAIMS AS TO ADVERTISERS AND  
12 PUBLISHERS, BECAUSE I'M NOT GOING TO -- I'M NOT GOING TO HAVE  
13 ONE LONE PUBLISHER COMPLAINT HANGING OUT THERE.

14 MR. SCHMIDTLEIN: YOUR HONOR, THIS IS JOHN  
15 SCHMIDTLEIN. IF I MAY, JUST FOR A MOMENT.

16 THE WORK -- AND I THINK THE PLAN THAT YOU ARE IN THE  
17 PROCESS OF LAYING OUT HERE, QUITE FRANKLY, HAS NOTHING TO DO  
18 WITH MR. ISQUITH'S CASE.

19 THE COURT: YEAH, YEAH.

20 MR. SCHMIDTLEIN: AND WE WILL DEAL WITH -- WE,  
21 FRANKLY, HAVE JUST SEEN IT. HE ALLEGES SOME VERY -- HE FOCUSES  
22 ON SOME VERY SPECIFIC CONDUCT THAT IS GERMANE TO GOOGLE AND  
23 FACEBOOK.

24 THE COURT: YEAH.

25 MR. SCHMIDTLEIN: IT IS -- I THINK WE ARE IN



1 AGREEMENT THAT IT IS RELATED, BUT HE IS REPRESENTING A  
2 DIFFERENT CLASS THAT ARE FOCUSED ON A VERY NARROW SET OF ISSUES  
3 WITHIN THE BROADER SET OF ISSUES HERE. AND HOW YOU EVENTUALLY  
4 DECIDE TO SORT OF CONSOLIDATE THAT, I DON'T THINK THERE'S GOING  
5 TO BE A --

6 THE COURT: I MAY NOT RELATE IT. I MAY NOT RELATE  
7 IT.

8 MR. SCHMIDTLEIN: UNDERSTOOD.

9 AND I UNDERSTAND YOU HAVEN'T SEEN THAT COMPLAINT, AND WE  
10 HAVEN'T ALL WEIGHED IN, BUT I RESPECTFULLY -- I THINK YOU  
11 SHOULD PLOW AHEAD HERE TODAY AND GET US ALL ON TRACK, AND WE  
12 CAN ALL DEAL WITH MR. ISQUITH'S COMPLAINT IN DUE COURSE.

13 THE COURT: OKAY.

14 AND SO I WILL LOOK FORWARD TO THE RELATION MOTION AND WAIT  
15 FOR ALL OF THE RESPONSES ON THAT.

16 AND TO THE EXTENT THERE ARE DEADLINES THAT ARE LOOMING,  
17 YOU WILL GO TO THE JUDGE WHO CURRENTLY HAS THE CASE AND SEEK  
18 SOME EXTENSIONS, AND I KNOW THEY ARE GENERALLY GRANTED.

19 WHO HAS THE CASE NOW, MR. ISQUITH?

20 MR. ISQUITH: YOUR HONOR, THE LAST TIME I CHECKED, IT  
21 WAS NOT -- IT HADN'T BEEN ASSIGNED YET, BUT THAT WAS YESTERDAY,  
22 SO IT MAY HAVE BEEN ASSIGNED ALREADY.

23 THE COURT: MAYBE IT WILL BE ASSIGNED TO ME, WHO  
24 KNOWS, ALTHOUGH I THINK MY PLATE IS FULL ON ANTITRUST, SO  
25 PROBABLY NOT.

1 MS. SHARP: YOUR HONOR, IF IT'S HELPFUL, IT'S  
2 ASSIGNED TO JUDGE HIXON, IT APPEARS.

3 THE COURT: OKAY. THAT'S GREAT.

4 SO BY FEBRUARY 25TH, I WILL HAVE APPLICATIONS OR A  
5 STIPULATION FOR A LEADERSHIP COMMITTEE AND LEAD INTERIM COUNSEL  
6 BY THE PUBLISHERS. IT'S NOT NECESSARY FOR THE ADVERTISERS.

7 I WILL THEN -- AND THEN I WILL ASK FOR A CONSOLIDATED  
8 PUBLISHERS COMPLAINT. IN THE APPLICATION, I WOULD ASK YOU TO  
9 IDENTIFY THE DATE BY WHICH THE CONSOLIDATED COMPLAINT WOULD BE  
10 FILED.

11 AND YOU'VE HEARD ME THIS MORNING, I'M TRYING TO BE  
12 GENEROUS, RECOGNIZING HOW SLOW THINGS ARE, EVEN THOUGH WE THINK  
13 WE ARE MOVING AT OUR NORMAL SPEED, WHICH WE REALLY AREN'T. SO  
14 IF YOU'RE STILL DELUSIONAL ABOUT THAT, IT'S BEEN A YEAR, SO GET  
15 OVER IT. BUT I'M NOT HERE TO MAKE YOUR LIVES MISERABLE, SO IF  
16 YOU ASK FOR 60 DAYS, I WOULD CONSIDER THAT REASONABLE.

17 THE ATTORNEY IN THE LAST CASE, I ASKED HER TO BE GENEROUS  
18 AND SHE SAID TWO WEEKS, AND I THOUGHT WOW, A PUNITIVE JUDGE  
19 MIGHT SAY TWO WEEKS, AND SO I JUST WANTED TO MAKE SURE YOU  
20 UNDERSTOOD THAT.

21 IN TERMS OF THE CURRENT PENDING MOTION TO DISMISS IN THE  
22 ORIGINAL CASE, THE DIGITAL AD CASE, I WANTED TO KEEP THAT ON  
23 TRACK AND GO FORWARD WITH THE BRIEFING.

24 MS. SHARP, YOU AND MR. SCHMIDTLEIN SHOULD CONTINUE TO  
25 DISCUSS THE ISSUE WITH YOUR CLAIMS FOR PUBLISHERS, AND I THINK

1 YOU WILL PROBABLY HAVE A SOLUTION ON THAT, YOU'VE HEARD MY  
2 COMMENTS ON IT.

3 IN THE SWEEPSTAKES CASE, I NOTICE THAT THERE WAS A PENDING  
4 MOTION TO CONSOLIDATE WITH THE OTHER PUBLISHERS, AND NOW THAT  
5 THAT'S MY CASE, I WOULD LIKE TO TERMINATE IT AS MOOT.

6 IS THERE ANY OBJECTION ON THAT, MR. MITCHELL?

7 MR. MITCHELL: NO OBJECTION, YOUR HONOR. THANK YOU.

8 THE COURT: GREAT. I JUST LIKE TO KEEP MY DOCKET  
9 CLEAN BEFORE I FORGET WHAT'S GOING ON.

10 LET'S SEE, WHAT OTHER NOTES DID I MAKE -- SO I WILL GO  
11 AHEAD AND TAKE CARE OF THAT.

12 I WILL REQUIRE THAT THERE BE -- I WILL -- I THINK I CAN DO  
13 THIS NOW. YOU ARE GOING TO START DISCOVERY, ALTHOUGH MAYBE NOT  
14 IN THE NEW CASES. WE ACTUALLY NEED A CASE MANAGEMENT  
15 CONFERENCE WHERE WE REALLY DEAL WITH YOUR INITIAL DISCLOSURES.  
16 I DON'T KNOW WHERE YOU ARE IN THE NEW CASES, WHETHER ANYTHING  
17 HAS HAPPENED.

18 MR. KOROLOGOS: NOT YET, YOUR HONOR.

19 THE COURT: OKAY. SO WE NEED TO SET A CASE  
20 MANAGEMENT CONFERENCE, BUT YOU PROBABLY WANT THAT AT LEAST  
21 90 DAYS OUT FROM NOW, DON'T YOU?

22 MR. KOROLOGOS: I THINK IT WILL HELP BOTH SIDES TO  
23 HAVE SETTLED ON A CONSOLIDATED AMENDED COMPLAINT, SO PERHAPS WE  
24 SET IT FOR 30 OR 45 DAYS AFTER THAT GETS FILED.

25 THE COURT: OKAY.

1 IT JUST TAKES SOME TIME, I KNOW, I'M JUST TRYING TO --  
2 THAT'S FINE.

3 THEN IN LOOKING AT MY NOTES, THEN WE DON'T NEED A JOINT  
4 PROTECTIVE ORDER YET; IS THAT CORRECT?

5 MR. SCHMIDTLEIN: CORRECT.

6 MR. KOROLOGOS: I THINK THAT'S PRIOR TO INITIAL  
7 DISCLOSURES BEING MADE.

8 THE COURT: AND I THINK THAT WRAPS UP WHAT WE NEED.

9 I'M CERTAINLY GOING TO BE LOOKING AT MAKING SURE THAT THE  
10 DISCOVERY IS ORDERLY AND COORDINATED, OR CONSOLIDATED HERE.

11 SO THE NEXT THING THAT WILL HAPPEN IS THAT I WILL RECEIVE  
12 THE APPLICATION FOR APPOINTMENT OF INTERIM LEAD COUNSEL BY THE  
13 25TH. I WILL HAVE FULLY BRIEFED MOTIONS TO RELATE IN THESE NEW  
14 CASES, THE THREE NEW CASES. SO MR. ISQUITH, YOU WILL BE FILING  
15 YOURS. MR. STEWART, YOU WILL FILE YOURS. AND MR. GRALEWSKI,  
16 YOURS IS FILED, AND I WILL BE LOOKING FOR THE RESPONSES TO  
17 THAT. SO I WILL MOVE THOSE ALONG. OF COURSE THERE ARE NO  
18 HEARINGS IN THOSE, SO I WILL JUST BE KEEPING AN EYE ON THEM.

19 AND I'M NOT GOING TO HOLD MY BREATH ON THE TEXAS ACTION  
20 COMING HERE, AND SO WE WILL JUST MOVE ON.

21 I'M INCLINED TO SET A FURTHER CASE MANAGEMENT CONFERENCE,  
22 BUT I DON'T WANT TO WASTE ALL YOUR TIME. I WANTED TO GET YOU  
23 ALL HERE NOW BECAUSE WE HAD SOME ISSUES, BUT DOES IT MAKE SENSE  
24 TO SET SOMETHING 60 DAYS FROM NOW, OR IS THAT PREMATURE?

25 MS. SHARP: YOUR HONOR, DENA SHARP.

1 I THINK IT WOULD BE HELPFUL.

2 MR. KOROLOGOS: IT NEVER HURTS TO CHECK IN, AND IF WE  
3 DON'T HAVE MUCH TO SAY, WE DON'T HAVE MUCH TO SAY.

4 MR. SCHMIDTLEIN: YOUR HONOR, IF I MAY.

5 WE DO HAVE -- I THINK, AS YOU KNOW, WE HAVE A HEARING ON  
6 THE MOTION TO DISMISS ON APRIL 8TH. THAT'S, I GUESS, A LITTLE  
7 MORE THAN 60 DAYS FROM NOW. AND I AGREE WITH MY COLLEAGUE THAT  
8 AT LEAST IN TERMS OF THE CMC THAT WOULD ADDRESS THE PUBLISHER'S  
9 SIDE, I THINK IT WOULD CERTAINLY BE HELPFUL FOR GOOGLE TO HAVE  
10 SEEN THE CONSOLIDATED AMENDED COMPLAINT.

11 SO MAYBE AT OR AROUND THE SAME TIME AS THE APRIL 8TH  
12 MOTION TO DISMISS HEARING. I KNOW YOUR HONOR SOMETIMES SORT OF  
13 DOES THOSE IN CONJUNCTION WITH MOTION HEARINGS, SO I JUST OFFER  
14 THAT FOR YOUR CONSIDERATION, IF THAT WOULD BE EFFICIENT.

15 THE COURT: WELL -- AND THAT'S A GOOD IDEA,  
16 MR. SCHMIDTLEIN.

17 I DON'T THINK YOU WILL BE HOPPING ON AN AIRPLANE, EVEN IN  
18 APRIL, BECAUSE I CERTAINLY AM CONCERNED ABOUT THE WEAR AND TEAR  
19 ON ATTORNEYS.

20 BUT TIFFANY, HOW CROWDED IS THE 8TH FOR CASE MANAGEMENT?

21 THE CLERK: YOUR HONOR, WE CURRENTLY HAVE THREE CMC'S  
22 SET, SO I BELIEVE THERE'S ROOM FOR THIS.

23 THE COURT: OKAY.

24 LET ME SET CASE MANAGEMENT ON APRIL 8TH AT 11:00. IF THE  
25 CONSOLIDATED PUBLISHER'S COMPLAINT IS NOT ON FILE, PLEASE DON'T

1 HESITATE TO ASK TO EXTEND THAT TIME. I WON'T BE LOOKING FOR  
2 IT, BUT YOU WILL. AND SO JUST ALL YOU NEED TO DO IS TO SUBMIT  
3 A REQUEST TO EXTEND IT, AND YOU WILL KNOW BY THEN WHEN IT'S  
4 COMING.

5 IN TERMS OF ANY STATEMENTS FOR THE CMC, I'M NOT -- I DON'T  
6 SEE THAT AS THE TIME FOR INITIAL DISCLOSURES, DO YOU? I THINK  
7 THAT'S PREMATURE.

8 MR. KOROLOGOS: I THINK THAT WILL BE A LITTLE EARLY,  
9 YOUR HONOR.

10 MR. SCHMIDTLEIN: AGREED, YOUR HONOR.

11 THE COURT: THEN I DON'T WANT YOUR NORMAL JOINT CASE  
12 MANAGEMENT STATEMENT UNDER OUR LOCAL RULES, THAT WOULD BE  
13 PREMATURE. WHAT I WOULD LIKE IS FOR YOU TO MEET AND CONFER IN  
14 ADVANCE AND SUBMIT A SINGLE SUBMISSION BY ALL OF YOU THAT  
15 IDENTIFIES AN AGENDA OF ISSUES YOU WOULD LIKE TO COVER AND ANY  
16 POSITION OF THE PARTIES THAT YOU WOULD LIKE TO ADVISE ME OF IN  
17 ADVANCE OF IT, AND IF YOU WOULD FILE THAT ONE WEEK BEFORE THE  
18 APRIL 8TH CASE MANAGEMENT CONFERENCE, BUT YOU ARE NOT COMPLYING  
19 WITH OUR COURT STANDING ORDER ON JOINT CASE MANAGEMENT  
20 STATEMENT.

21 ALL RIGHT. I THINK WE'VE COVERED EVERYTHING. YOU'VE ALL  
22 HELPED ME OUT TREMENDOUSLY TO GET MY ARMS AROUND THIS, AND I  
23 THINK AT LEAST IN THE NEAR TERM, I WANT TO TRY TO KEEP A CLOSE  
24 WATCH ON THIS AND DO THESE CASE MANAGEMENT CONFERENCES WITH  
25 SOME REGULARITY.

1 SO I WILL -- OVER THE NEXT THREE WEEKS, I WILL BE GETTING  
2 A FEW THINGS AND WE WILL MOVE TOWARD PUTTING THIS IN ORDER.

3 OKAY. ANYTHING ELSE?

4 MR. SCHMIDTLEIN: THANK YOU, YOUR HONOR.

5 MS. SHARP: THANK YOU, YOUR HONOR.

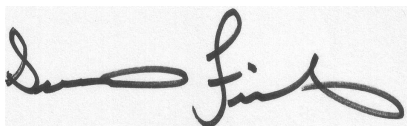
6 THE COURT: ALL RIGHT. THANK YOU ALL.

7 (THE PROCEEDINGS WERE CONCLUDED AT 11:15 A.M.)  
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**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.



SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 2/8/21